

Lisa Morris et al.
v.
Bank of America, N.A.

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.

IF YOU HAD A CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A. (“BANA”) AND YOU WERE ASSESSED A RETRY TRANSACTION FEE, INTRABANK TRANSACTION FEE, OR AN OVERDRAFT FEE OR NSF FEE AS A RESULT OF FEE TIMING PRACTICES, BETWEEN JULY 1, 2014 AND JULY 29, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

The District Court for the Western District of North Carolina has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION

DO NOTHING.	If you were assessed, paid, and were not refunded the types of fees that are being challenged in this case, then you will receive a payment from the Settlement Fund so long as you do not exclude yourself (described in the next box).
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS.	You can choose to exclude yourself from the Settlement, or “opt out.” This means you choose not to participate in the Settlement. You will keep your individual claims against BANA, but you will not receive a payment. The deadline to opt out of the Settlement is November 11, 2021 . If you opt out but still want to recover against BANA, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT.	If you do not opt out but instead wish to object to the Settlement or any matters described in the Class Notice, you may do so by filing with the Court a notice of your intention to object. The deadline to object to the Settlement is November 11, 2021 .

These rights and options—*and the deadlines to exercise them*—along with the material terms of the Settlement are explained in this Class Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Lisa Morris et al. v. Bank of America, N.A.*, Civil Action No. 3:18-cv-157-RJC-DSC. The persons who sued are called the “Class Representatives” or “Plaintiffs.” The Defendant is “BANA.” The case is a “class action.” That means that the Class Representatives are acting on behalf of the three Settlement Classes. The transactions at issue occurred **between July 1, 2014 and July 29, 2021**.

The first Settlement Class consists of all holders of a BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded a Retry Transaction Fee. Retry Transaction Fees are insufficient fund (“NSF”) and/or overdraft (“OD”) fees that were assessed on an automated clearinghouse (“ACH”) transaction from a consumer checking account that was resubmitted to BANA by the merchant (company to whom the Settlement Class Member made his/or ACH payment) after the merchant’s first request for payment was declined. In other words, you are in the first Settlement Class if you paid more than one NSF or OD fee for the same attempted ACH payment based on a merchant’s request for that payment more than once.

The second Settlement Class consists of all holders of a BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded one or more NSF or OD fees on an ACH payment from their consumer checking account to another BANA account, like a mortgage or credit card. These are referred to as “Intrabank Transaction Fees.”

The third Settlement Class consists of all holders of a BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded an NSF and/or OD fee on a consumer checking and/or savings account transaction that would not have been assessed if BANA had delayed the posting of previously assessed NSF/OD fees. These are referred to as “Fee Accrual Claim Fees.”

BANA denies all wrongdoing and liability and denies that Plaintiffs’ claims entitle them or the Settlement Class Members to any relief and denies that anyone was harmed by the conduct that the Plaintiffs allege.

2. Why did I receive Notice of this lawsuit?

You received the Class Notice because BANA’s records indicate that you are in one or more Settlement Classes that were alleged to have been charged one or more of the fees at issue. The Court directed that the Class Notice be sent to all Settlement Class Members because each Settlement Class Member has a right to know about the proposed Settlement and the options available to him or her before the Court decides whether to approve the Settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Class Representative’s lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Class Representatives. The Class Representatives have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsel’s opinion, that this Settlement is in the best interest of all Settlement Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that BANA breached its agreements with customers or otherwise acted improperly by assessing the OD and NSF fees that are the subject of this case. There is also uncertainty about whether the Class Representatives’ claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Class Representatives were to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current Settlement Amount, and it may take years of litigation before any payments would be made. By settling, the Settlement Class Members will avoid these, and other risks, and the delays associated with continued litigation.

While BANA disputes Plaintiffs’ claims, it has agreed to settle to avoid the costs, distractions, and risks of litigation. Thus, even though BANA denies that it did anything improper, it believes the Settlement is in its best interest and in the best interests of all of its customers.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the Settlement?

If you received the Class Notice, then BANA's records indicate that you are a Settlement Class Member who is entitled to receive a payment.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

5. What options do I have with respect to the Settlement?

You have three options: (1) do nothing and you will receive a payment according to the terms of this Settlement, but you give up your rights to sue BANA separately about the same legal claims in this lawsuit; (2) exclude yourself from the Settlement ("opt out" of it) and you will not receive any settlement payment; or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

If you do nothing, you will receive a Settlement Payment.

The deadline for sending a letter to exclude yourself from, or opt out of, the Settlement is **November 11, 2021**.

The deadline to file an objection with the Court is **November 11, 2021**.

7. How do I decide which option to choose?

If you do not like the Settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this Settlement, then you may want to consider opting out.

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees with you, then the Settlement will not be approved, and no payments will be made to you or any other Settlement Class Member. If your objection (and any other objection) is overruled, and the Settlement is approved, then you will still get a payment.

8. What must happen for the Settlement to be approved?

The Court must decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the Settlement, which is why you received this Class Notice. The Court will make a final decision regarding the Settlement at a "Final Fairness Hearing," which is currently scheduled for **January 18, 2022**.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

BANA has agreed to create a Settlement Fund of \$75,000,000.00 (the "Settlement Amount"). As discussed separately below, attorneys' fees, expenses, Service Awards to the Class Representatives, and costs to administer the Settlement will be paid out of this amount. Subject to Court approval, the balance of the Settlement Fund will be divided among all Settlement Class Members on a pro rata basis. Additionally, because of this lawsuit, BANA has agreed, for a period of at least five years, to change certain of its practices and stop assessing fees on Retry Transactions. In addition, BANA will implement changes to its consumer account disclosures.

10. How much of the Settlement Fund will be used to pay for attorney fees and costs?

Class Counsel will request that the Court award up to one third (33–1/3%) of the Settlement Amount as attorneys’ fees plus reimbursement of litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys’ fees based on a number of factors, including the risk associated with bringing the case, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Class Representatives a Service Award?

Class Counsel, on behalf of the Class Representatives, will request Service Awards of between \$1,000.00 and \$10,000.00 to be paid to each of the Class Representatives.

12. How much will my payment be?

Subject to Court approval, the balance of the Settlement Amount after attorneys’ fees and costs, the Service Awards, and the Settlement Administrator’s fees, also known as the “Net Settlement Fund,” will be divided among all Settlement Class Members entitled to Settlement Payments in accordance with the formulas outlined in the Settlement Agreement found at www.NSFODSettlement.com. Current customers of BANA will receive a credit to their BANA accounts for the amount they are entitled to receive. Former customers of BANA shall receive a check from the Settlement Administrator.

13. Do I have to do anything if I want to participate in the Settlement?

No. Any amount you are entitled to under the terms of the Settlement will be distributed to you, unless you choose to exclude yourself from the Settlement, or “opt out.” Excluding yourself from the Settlement means you choose not to participate in the Settlement. You will keep your individual claims against BANA, but you will not receive a payment. In that case, if you choose to seek recovery against BANA, then you will have to file a separate lawsuit or claim.

14. When will I receive my payment?

The Court will hold a Final Fairness Hearing on **January 18, 2022**, to consider whether the Settlement should be approved. If there are no objections and the Court approves the Settlement, then payments should be made within approximately 30 days after the Settlement’s Effective Date. The Effective Date is either the date on which the time to appeal the Final Approval Order passes and no appeals have been filed or the date on which the Final Approval Order is affirmed, all appeals are dismissed, and no further appeal is permitted. However, if someone objects to the Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the Settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue BANA for the claims alleged in this lawsuit, then you must exclude yourself, or “opt out.”

To opt out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say, “I hereby elect to be excluded from the Settlement in the *Lisa Morris et al. v. Bank of America, N.A.* class action.” Be sure to include your name, your address, and your signature. Your exclusion or opt-out request must be **postmarked by November 11, 2021**, and sent to the following address:

Morris v. Bank of America, N.A. Settlement
Exclusions
P.O. Box 5645
Portland, OR 97228-5645

16. What happens if I opt out of the Settlement?

If you opt out of the Settlement, you will preserve and not give up any of your rights to sue BANA for the claims alleged in this case. However, you will not be entitled to receive a payment from this Settlement. Opting out may preclude later participation in any later class action against the Released Parties.

17. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

18. How do I notify the Court that I do not like the Settlement?

You can object to the Settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the Settlement. (Settlement Class Members who exclude themselves from the Settlement have no right to object to how other Settlement Class Members are treated.) To object, you may do so by filing with the Court a notice of your intention to object. Your objection must include the following:

- A statement of your intention to object to the Settlement in the *Lisa Morris et al. v. Bank of America, N.A.* class action;
- Your name, address, telephone number, and the contact information for any attorney you have retained in connection with this case;
- A statement of the factual and legal basis for each objection and any exhibits you wish the Court to consider in connection with the objection;
- A statement as to whether you intend to appear at the Final Approval Hearing, either in person or through an attorney, and, if through an attorney, identifying the attorney by name, address, and telephone number; and
- Your signature.

Be advised that if you object to the Settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney's fees and costs.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately and will be bound by the terms of the Settlement Agreement and the orders and judgments of the Court.

To be timely, written notice of an objection must be filed or received by **November 11, 2021**, to the following addresses:

CLERK OF COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
United States Courthouse 401 West Trade Street Room 1301 Charlotte, NC 28202	Larry McDevitt David M. Wilkerson The Van Winkle Law Firm 11 North Market Street Asheville, NC 28801	Brian A. Kahn Jasmine K. Gardner MCGUIREWOODS LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28202

19. What is the difference between objecting and requesting exclusion from the Settlement?

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the Settlement. If you object to the Settlement and do not opt out, then you are entitled to a payment if the Settlement is approved, but you will release claims you might have against BANA. Excluding yourself, or opting out, is telling the Court that you do not want to be part of the Settlement, and do not want to receive a payment or release claims you might have against BANA for the claims alleged in this lawsuit.

20. What happens if I object to the Settlement?

If the Court sustains your objection, or the objection of any other Settlement Class Member, then there is no Settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the Settlement.

THE COURT'S FAIRNESS HEARING

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing **January 18, 2022**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Class Representatives should get as a Service Award for acting as the class representatives.

22. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You or your lawyer may appear at the hearing at your own expense if you desire to do so, but you do not have to. If you have submitted an objection, then you may want to attend.

23. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18 above, the statement, "I hereby give notice that I intend to appear at the Final Fairness Hearing." You must include the following:

- State how much time the Settlement Class Member anticipates needing to present the objection.
- Identify, by name, address, and telephone number, all witnesses the Settlement Class Member proposes to have testify.
- Summarize in detail the anticipated testimony of all such witnesses.
- Identify all exhibits the Settlement Class Member intends to offer in support of the objection.
- Attach complete copies of all such exhibits.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing at all, and if the Settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Settlement Administrator expenses, and the Class Representatives Service Awards. You will be considered a part of the class, and you will give up claims against BANA for the conduct identified in the Settlement. You will not give up any other claims you might have against BANA that are not released in this Settlement.

THE LAWYERS REPRESENTING YOU

25. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this Notice as "Class Counsel" will represent you and the other Settlement Class Members. You may hire your own attorney, at your own expense if you desire to do so, but you do not have to.

26. Do I have to pay the lawyer for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

27. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Final Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Settlement Administrator, www.NSFODSettlement.com.

GETTING MORE INFORMATION

This Class Notice only summarizes the proposed Settlement. For additional information about the Settlement and/or to obtain copies of the Settlement Agreement, the pleadings in this case, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Morris v. Bank of America Settlement
P.O. Box 5645
Portland, OR 97228-5645
(855) 654-0890
www.NSFODSettlement.com

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF BANA CONCERNING THIS NOTICE OR THE SETTLEMENT.